First Nations Water Rights in British Columbia

A Historical Summary of the rights of the Kluskus First Nation

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MINISTRY OF ENVIRONMENT, LANDS and PARKS
WATER MANAGEMENT BRANCH

FIRST NATIONS WATER RIGHTS IN BRITISH COLUMBIA:

A Historical Summary of the rights of the Kluskus First Nation

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The sheer numbers of First Nations groups' with histories of water rights made the completion of the Report Series seem, at times, prolonged. The determination, patience and vision of the partners was essential in the completion of the Series and is gratefully acknowledged.

Gary Robinson
Project Manager
Water Management Branch

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FIRST NATIONS WATER RIGHTS REPORT

BAND: Kluskus

ADDRESS: 4-651 Wade Ave, Quesnel BC, V5T 1E2

CHIEF: Roger Jimmie

PHONE: 992-8186 **FAX:** 992-3929

AFFILIATION: Carrier-Chilcotin Nation

LOCATION:

The Kluskus Band occupy 17 separate reserves in the Interior Plateau region of British Columbia. The reserves are:

Bishop Bluffs 5	Bishop Bluffs 6	Bishop Bluffs 10
Chief Mooris 13	Cluchuta Lake 10A	Cluchuta Lake 10B
Klyadingli 2	Kluskus 1	Kluskus 14
Kushya Creek 7	Kushya Creek 12	Sundayman's Meadow 3
Tatelkus Lake 28	Tsachla Lake 8	Tzetzi Lake 11
Upper Kluskus Lake 9	Yaladelassla 4.	

Of the 17 reserves, only one, Yaladelassla 4, has records of water allocations. Yaladelassla 4 is a 70 hectare reserve located on the Fraser Plateau, situated on the northern shores of the Euchiniko Lakes.

The most recent population figures compiled by the Ministry of Finance report that the Kluskus Band has a population of 69 persons living on-reserve as registered members. The total population of the Band, including registered and non-registered members living on-reserve, on crown land and off-reserve, is 154.

The 17 reserves comprising the Kluskus Nation lie at elevations ranging from 3000 to 4000 feet above mean sea level. The area is subject to a climate in which average daily temperatures range from a low of -15 degrees centigrade in January to up to 16 degrees centigrade in July. Average rainfall for the area totals between 30 and 50 centimetres, annually.

Water courses of significance include:

- Yaladelassla Creek - flows south, through the western portion of Yaladelassla Reserve 4, and drains into Euchiniko Lake.

WATER ALLOCATIONS

There are no records of water allocations having been assigned to the Kluskus Band by the Indian Reserve Commission.

The water rights of the Kluskus Band have been affected by four actions of government over the years:

1) Lieutenant Governor-in-Council approval by Order-in-Council, granting water rights.

2) Determinations of the Board of Investigation under the *Water Act, 1914* in response to claims made by the Department of Indian Affairs. Determinations often recommended the issue of water licenses.

3) The granting of water licenses in response to Federal Government or third-parties' applications, for the use of water on reserves.

4) Actions to amend licensed rights, pursuant to provisions in the *Water Act*.

HISTORY, CURRENT STATUS, AND PERTINENT NOTES

The history of water rights, the current status of rights, and pertinent notes for the Kluskus Band with respect to Yaladelassla Reserve 4 are as follows:

YALADELASSLA 4

Yaladelassla Creek

History:

Jun 2, 1908 The Lieutenant Governor-in-Council ordered, on the recommendation of the Chief Commissioner of Lands and Works, that the following Water Record be issued:

"Water Record No. 165, dated August 19th, 1902, issued to E. Bell, Indian Agent, for 100 inches out of Ya-la-del-as-la Creek, to be used on the Ya-la-del-as-la Indian Reserve No. 4, Kluskus Lake."*

* Note: The reference to an inch of water is understood to be a "miner's inch" of water. The Water Act of 1914 defined a miner's inch as being equal to a flow of .028 cubic feet per second. This rate of flow over an anticipated irrigation season of 100 days is equivalent to 5.53 acre feet for 1.0 miner's inch.

Jun 10, 1920 At a final hearing of the Board of Investigation, acting pursuant to the *Water Act* 1914, the Board determined that a valid water record affecting the claim of the Department of Indian Affairs to rights to the use of the waters of Ya-la-del-as-la Creek was made under the authority of an Act passed prior to the 12th day of March, 1909. The Order of the Board, numbered 7126, set out that a conditional license should be issued which would:

(i) provide for the diversion from Ya-la-del-as-sla Creek;
(ii) take precedence from the 19th day of August, 1902; and
(iii) authorize the diversion of a maximum of 92 acre feet of water a year for the irrigation of 46 acres of Ya-la-del-as-la Reserve (No. 4 Kluskus), provided that 10,000 gallons of water a day throughout the year can also be used for domestic purposes.

Dec 15, 1925 The Comptroller of Water Rights issued Conditional Water License 8286, which embodied the terms and conditions set out in Board Order 7126.

Current Status:

Conditional Water License 8286, registered in the name of the Kluskus Band, is the only active license on Yaladelassla Creek. There is no recent information on file to indicate the current exercise of rights under this license.

The Water Survey of Canada has no records of streamflow on Yaladelassla Creek and there is no other current information on water availability.

Notes:

1. The date of precedence assigned to Conditional Water License 8286 is consistent with the date of the Order in Council.

2. The quantity of water allocated under Conditional Water License 8286 (92 acre feet a year) is significantly less than the amount allocated by the Order in Council (approximately 555 acre feet a year).

   The basis for the Board of Investigation's determination recommending a reduced allocation under Conditional Water License 8286, is unknown.

OTHER INFORMATION:

Groundwater Records:

A review of well records maintained by the MELP - Groundwater Section indicates that no wells have been reported for the Kluskus Band Reserves.

As the provision of well information to the Groundwater Section is voluntary, this review should not be assumed to be complete.

Municipal Water Sources:

At this time the potential for water supply from a municipal system is limited, as there are no municipal water systems in realistic proximity to the Kluskus Band Reserves.

ATTACHMENT 1

Summary of Water Records

Kluskus Band

Water Source	Priority Date	Reserve Name	File Number	Document Type	Status	Superceded By	Licence PUC/MOD & OIC Allotments	Comments
Yaladelassla Creek	1908/06/04	Yaladelassla # 4		OIC Water Record No. 165			*"100 inches out of Ya-la-del-as-la Creek"* (AGBC #677)	Water Record No. 165: Formally recognized by Province in CL 8268 (Board Order 7126).
Yaladelassla Creek	1902/08/19	Yaledelassla #4	0241137	CL 8286	Current		92 AF/Irrigation 10,000 GAD/Domestic	CL 8286: Based on Board Order 7126 and Water Record No. 165. Precedence Date: Consistent with Water Record 165. Allocation: significantly less than Water Record 165. Priority 1: Yaladelassla Creek.

LEGEND:

Licence Types (Document Types)

CL: Conditional Licence
FL: Final Licence

Mechanisms for Allocation (Document Type)

OIC: Order-in-Council (as issued by the Luitenant Governor in Council)
MOD: Minute of Decision (as recorded under the Indian Reserve Commission)
IRC: Indian Reserve Commission
AGBC: Attorney Generals Office of BC (followed by File #)

Allotment Units (Licence PUC/MOD & OIC Allotments)

GAD: Gallons a day
AF: Acre feet
CFS: Cubic feet per second

ATTACHMENT 2

AGBC 677

#369

At the Executive Council Chamber, Victoria, B. C.

The 2nd: day of June, , A. D. 1905.

Present:

The Honourable

Mr. McBride. in the Chair.

Mr. Fulton.

Mr. Tatlow.

Mr. Young.

Mr.

On the recommendation of the Honourable

The Chief Commissioner of Lands & Works

and under the provisions of _____ Chapter 190: R.S.

~~Administrator~~ ~~Lieutenant Governor~~ His Honour the ~~Lieutenant Governor~~ of British Columbia, by and with the advice of his ~~Executive~~ Council, doth order as follows: ~~That the Water Records referred to in the annexed~~ Minute be and are hereby ratified and confirmed, and that a copy ~~certified copies~~ of the Minute ~~attached hereto~~ certified ~~this Order in Council~~ be forwarded to the Assistant Commissioner of Lands and Works at Barkerville and to A. W. Vowell, Superintendent of Indian Affairs at Victoria, respectively.

A. Campbell Redding.

Deputy Clerk Executive Council.

APPROVED AND ORDERED THIS 1st DAY OF June A.D. 1905

J. Dunsmuir

Administrator.

DC Nov 16-5/6

369

To His Honour
The ~~Lieutenant Governor~~ Administrator in Council.

copy sig to dup for: mailed to Ind Supt. Aug 30/08

The undersigned has the honour to report for the consideration of Council:-

That the following Water Records have been issued by the Assistant Commissioner of Lands & Works at Barkerville under the provisions of Section 35 of the Water Clauses Consolidation Act without first having obtained the authority of His Honour the Lieutenant Governor in Council as provided by said Section.

Water Record No. 48, dated August 15th, 1899, issued to E. Bell, Indian Agent, for 100 inches of water from Five Mile Creek, to be used on Williams Lake Indian Reserve.

Water Record No. 136, dated December, 22nd, 1900, issued to Soda Creek Indian Reserve by Indian Agent E. Bell for 300 inches out of Deep Creek to be used at Soda Creek Indian Reserve at Deep Creek.

Water Record No. 165, dated August 19th, 1902, issued to E. Bell, Indian Agent, for 100 inches out of Ya-la-del-as-la Creek, to be used on the Ya-la-del-as-la Indian Reserve No. 4, Kluskus Lake.

AND TO RECOMMEND, that the aforementioned Water Records be ratified and confirmed as from their respective dates of issue, subject to such prior rights as existed, and that certified copy of this Minute if approved, of ~~the Order in Council~~ be forwarded to the Assistant Commissioner of Lands and Works at Barkerville and to A. W. Vowell, Superintendent of Indian Affairs at Victoria, respectively.

Dated this 30th day of May A.D. 1908

Chief Commissioner of Lands and Works.

Approved this 2nd day of June, A.D. 1908.

Presiding Member of the Executive Council.

ATTACHMENT 3

PROVINCE OF BRITISH COLUMBIA | WATER RIGHTS BRANCH. | DEPARTMENT OF LANDS.

CONDITIONAL WATER LICENCE.

(For a n Irrigation Purpose.)

WHEREAS the Board of Investigation, constituted and acting under the "Water Act," duly held an investigation respecting the water set out in the order No. 7126, duplicate of which is hereto attached, and in the said order directed the Comptroller of Water Rights to issue a conditionnal licence in respect of the particular record and claim respectively set out therein, and further therein named the terms and conditions to be embodied in the said licence:

NOW, THEREFORE, I, Comptroller of Water Rights of the Province of British Columbia, in pursuance of the said order and in conformity with the "Water Act," issue this conditional licence, and declare the rights in and to the use of the said waters held under the said record in respect of the said claim to be such as are set out in the said order; and the terms and conditions of the said order and any exhibits which are therewith incorporated are hereby incorporated herewith and form a part hereof. This licence is appurtenant to Yu-in-del-nu-ain I.R. (No.4 Klukus).

Made and entered this 15th day of December, 1925

E. A. Cleveland

Comptroller of Water Rights.

No. 8286

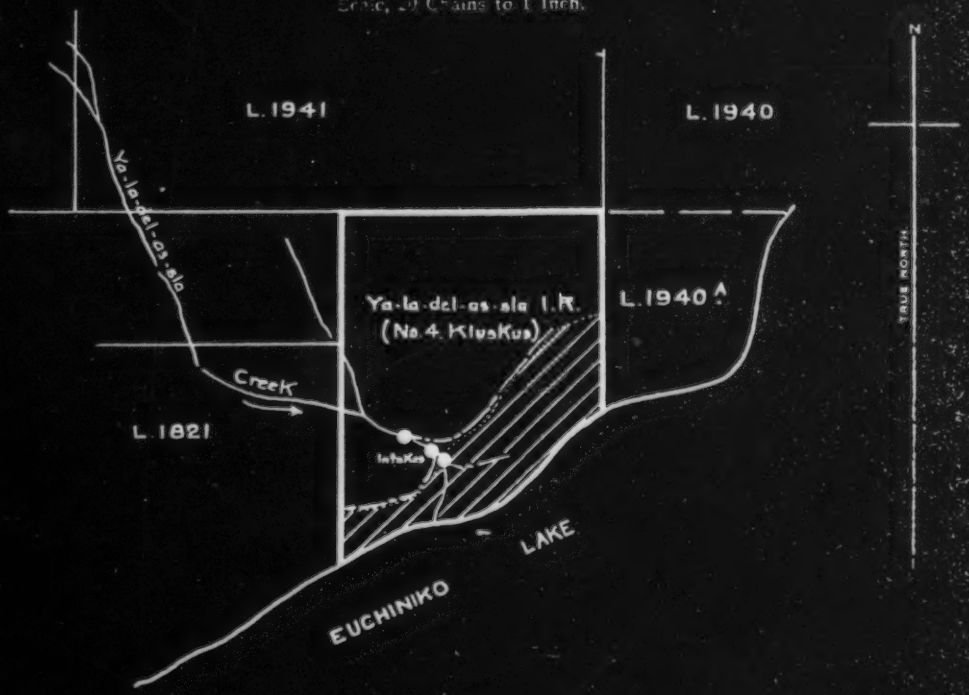
Form No. 1004, W.R.B. (Licence in respect of Board Order)—800-625-1437

British Columbia

To accompany Board Order No. 7126

QUESNEL WATER DISTRICT.

Scale, 20 Chains to 1 Inch.



COAST. RANGE 4.

LEGEND
Intake ●
Ditch – – –
Road
The boundaries of the land to which this licence is appurtenant are shown shaded.
46 acres within the said boundaries are claimed to be irrigable, were shown by single hatching.
exhibit
exhibit

Description of Works constructed.
Ditch

Signature. J. E. Lane 15 Dec. 1925
(C.L. 8286.)

B.O. 7126
File 1-19-1.

EXHIBIT "A" Ref. Map 40(E-12).

250-124-4817

PROVINCE OF BRITISH COLUMBIA | WATER RIGHTS BRANCH | DEPARTMENT OF LANDS

DETERMINATION AND ORDER

(For a Conditional Water Licence for Irrigation Purposes)

BY THE BOARD OF INVESTIGATION
UNDER THE "WATER ACT"

IN THE MATTER of the Claims of the Department of Indian Affairs to Rights to the Use of the Waters of Ya-la-del-as-ula Creek, a tributary of Euchiniko Lake, in the neighborhood of Euchiniko Lake, in the Quesnel Water District.

. . . . . .

NOW, on the 10th day of June, 1920, the above-entitled matter coming on regularly for final hearing before the Board of Investigation; due notice having been given of the time and place of hearing; all and every the steps required under the Act to be taken by the Board before a determination of the said rights and claims should be made having been taken; all evidence, testimony, and proofs filed with the Board or presented in the above-entitled matter having been duly considered; a quorum of the Board being present at the hearing; and the Board being now fully advised in the premises, determines with respect to the said claims (which are on file and designated as Indian File No.1-19-1) that a valid water record affecting the said claim was made under authority of an Act passed prior to the 12th day of March, 1909, and that under the said Water Record the Kluskus tribe or band of Indians was granted a right to take and use water from Ya-la-del-as-ula Creek, a tributary of Euchiniko Lake, for irrigation and domestic purposes on the Ya-la-del-as-ula Indian Reserve, being Reserve No.4 of the said tribe or band.

2. The claims of the Department of Indian affairs with respect to the said waters are allowed by the Board to the extent hereinafter specified, and the Comptroller of Water Rights is hereby directed to issue a conditional licence in respect thereof embodying the following terms and conditions:—

(*a*.) The source of the water supply is Yo-lo-del-no-lo Creek, a tributary of Euchiniko Lake.

(*b*.) The points of diversion from the said sources are located as shown in the exhibit marked "A" hereto attached, which is incorporated herewith and made a part hereof, the original of which exhibit is on file in the office of the Comptroller of Water Rights, Parliament Buildings, Victoria, B.C.

(*c*.) The date from which the said licence shall take precedence is 19th August, 1902.

(*d*.) The purpose for which the water is to be used is irrigation.

(*e*.) The maximum quantity of water per annum which may be used when irrigation is extended to all the lands mentioned in subclause (*g*) of this clause, until lawfully altered, is 92 acre-feet, and the maximum quantity of water which may be used per annum on each acre actually irrigated until lawfully altered is 2 acre-feet: Provided that where sources of supply other than those named in subclause (*a*) hereof are drawn upon for the irrigation of a part or all of the same lands as are described in subclause (*g*) hereof, the maximum quantity of water which may be used under the licence hereby directed to be issued shall be reduced by the quantity which the licensee may be entitled to use from said other sources of supply: Provided further that when the Engineer of the Water District has accumulated the requisite hydrographic data for determining to the satisfaction of the Comptroller the *pro rata* part of the said total quantity to be apportioned to the licence hereby directed to be issued, the Comptroller shall require the surrender of the licence, and shall amend the same by stating the particular quantity to which the licensee is entitled from the particular sources named therein.

(*f*.) The period of the year during which the water may be used is between the first day of April and the thirtieth day of September.

(*g*.) The water may be used on the Yo-lo-del-no-nlo Indian Reserve (No.4 Nuskus) of which 46 acres are said to be irrigable. The extent and location of the said irrigable lands are more particularly shown in the said Exhibit "A."

(*h*.) The works which are required to be constructed before the issue of a final licence are the clearing, stumping, and levelling of the irrigable lands on the said reserve and the additional works required for conducting thereto the maximum quantity of water hereby authorized to be diverted.

(*i*.) The execution of the said works shall be commenced or resumed on or before the first day of June, 1926, and shall be prosecuted with due diligence and in a workmanlike manner and to the satisfaction of the Comptroller of Water Rights.

(*j*.) The said works shall be completed and the quantity of water to which the licensee is entitled beneficially used for the purpose set out in the licence on or before the first day of November, 1930.

(*k*.) Before any change is made in the said works which would be a material deviation from the plans as approved or the works as accepted by the Comptroller, plans of such proposed change must be filed with the Comptroller and approved by him.

(l.) The nature and the extent of the incidental uses permitted under the licence are: For domestic purposes, the use of 10,000 gallons a day of water from any or all the said sources of supply during the whole of the year; and for storage purpose, such quantity of water (not exceeding ---------- acre-feet) as, together with the natural flow-water used hereunder, will be necessary to secure to the licensee the quantity granted hereunder. The water which may be so stored shall be that of ---------- and it may be stored (accumulated) in a reservoir at ---------- between the first day of October in each year and the first day of June in the succeeding year, and may be used as provided for in subclauses (*d*), (*e*), and (*f*) of this clause, but such uses shall not enlarge the quantity of water allowed by subclause (*c*) hereof.

(*m*.) The Board may extend the time for the commencement, resumption, or completion of the execution of the works on being satisfied that it is in the public interest and that it will not injuriously affect the rights of any licensee.

(*n*.) The licence shall not in any way be deemed to be a final licence for the use of water, but shall have the effect only of a conditional licence issued under Part ~~V.~~ II. of the "Water Act, ~~1914~~," and shall be subject to all the provisions of the said Act, including the filing of proof of the completion of the said works and the putting of the water to such beneficial use within the time limited by the provisions of section ~~117~~ 72 of the said Act.

3. Pending the issue of the licence hereby authorized to be issued, the terms and conditions of this order shall govern the respective rights of the record-holders or claimants affected thereby.

Made and entered this 15 TH. day of December, 192-

THE BOARD OF INVESTIGATION:

By "J.3.T.Alexander", ~~Chairman~~ Member.

and "J.E.Lane", *Member.*

Rif 40(9.12)

Form 587 (3). W.R.B.—1M-1024-7719.

Order No. 7126.

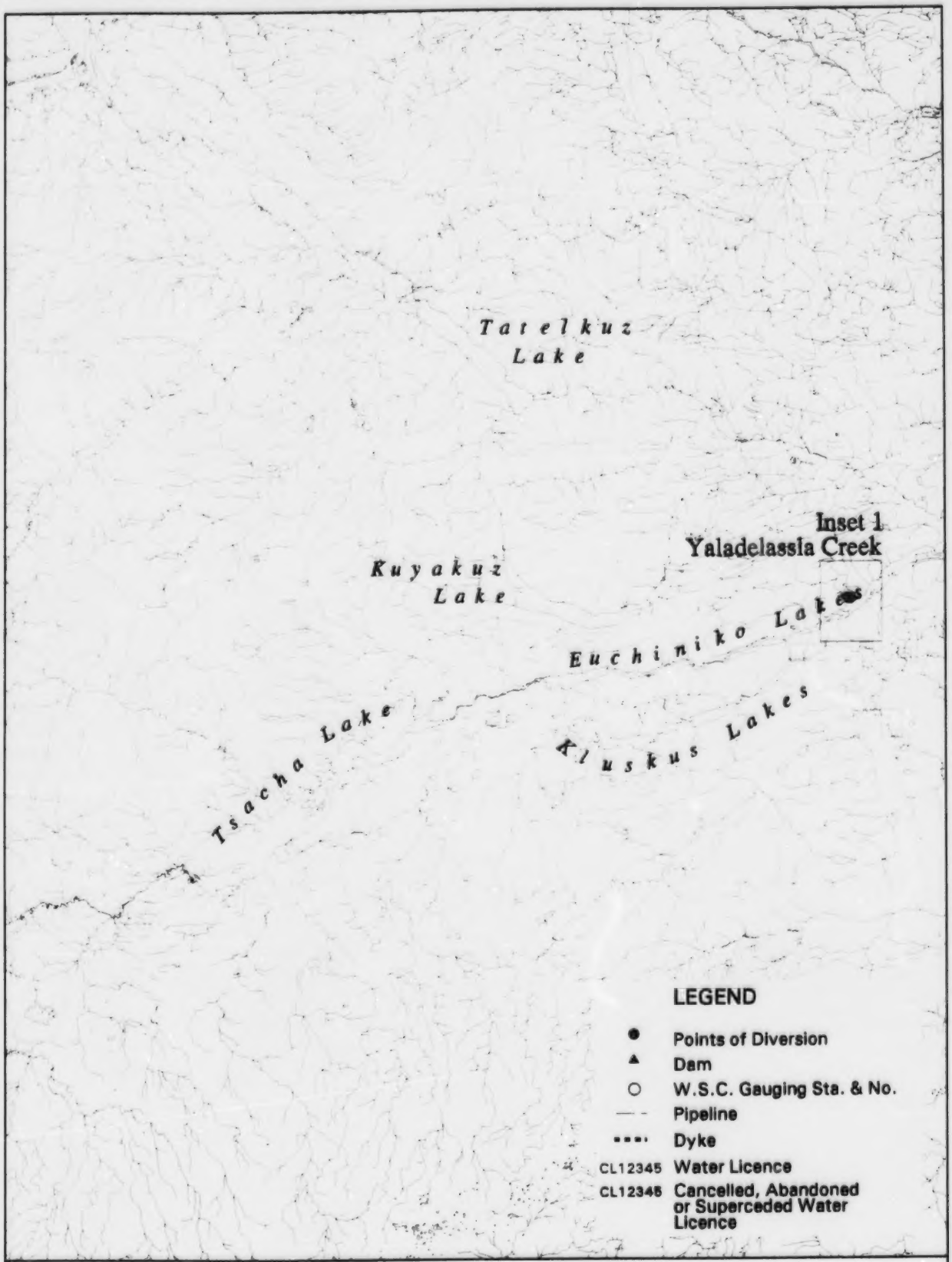
Stream Register Report Water Licence Information System

Report Requested By : DJOLLY
Date Report Requested : 1995/10/02 16:06
Report Sorted By : Source Gazetted - Priority Date - Licence Number
Selection Criteria
START POINT : PD34318 - 93F/SE(1-6) E
END POINT : SO20548 - Yeladelassie Creek left of Euchiniko Lakes

Priority YYYY/MM/DD	Licence Number	File Number	Appurtenancy	Licensee	PUC	Quantity/Units	Term Start	Term End	Licence Comments	Process Status
Source		WR Map	POD	RED POD Comments					Proc	
1903/08/19	C008286	0241137	46 AC OF IR 4 YALADELASSLA CARIBOO DIST	KLUSKUS INDIAN BAND 989-721-8316 395 A KINCHANT ST QUESNEL BC V2J3J8	DOM IRR	10,000.00 GD 92.00 AF	Jan 01 Apr 01	Dec 31 Sep 30		
Yaladelassla Creek		WR93F/SE(1-f)	F N							
Yaladelassla Creek		WR93F/SE(1-f)	G N						26A QUE - HAZKO	
Yaladelassla Creek		WR93F/SE(1-f)	E N							

---------- Total of 1 Licence Reported ----------

ATTACHMENT 5



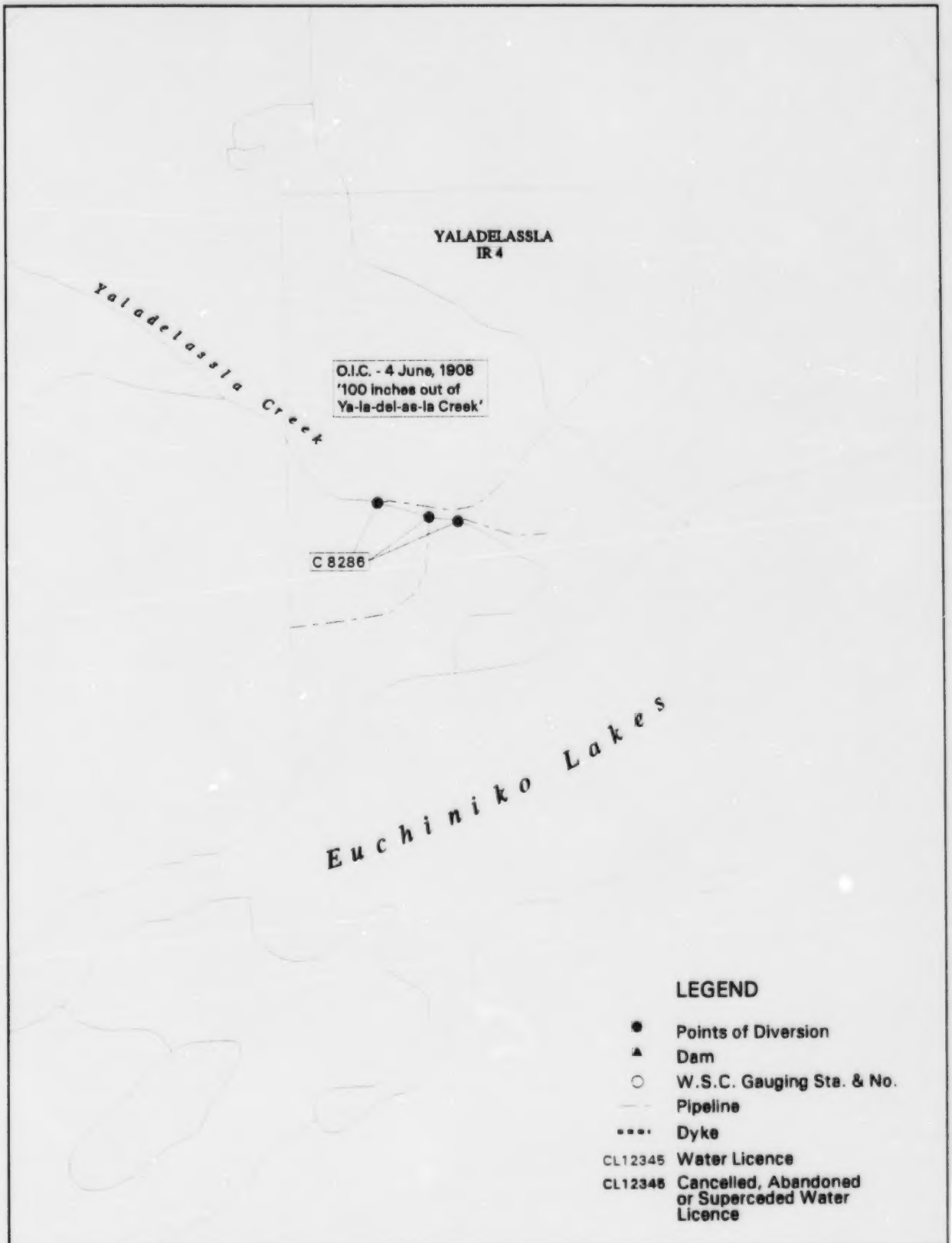
Kluskus

Scale 1:300,000

Ministry of Environment, Lands & Parks

Date: May 02, 2000

Environment & Lands Division



Yaladelassla Creek

Scale 1:10,000

Ministry of Environment, Lands & Parks

Date: May 02, 2000

Environment & Lands Division